

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Chaves	Team: Squad #7	CCRB Case #: 201904815	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sun, 06/02/2019 3:41 AM	Location of Incident: Miller Avenue and Fulton Street	Precinct: 75	18 Mo. SOL 12/02/2020	EO SOL 7/19/2021	
Date/Time CV Reported Tue, 06/04/2019 1:00 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 06/04/2019 1:00 PM		

Complainant/Victim	Type	Home Address
1. D [REDACTED] S [REDACTED]	Comp/Victim	[REDACTED]
2. K [REDACTED] C [REDACTED]	Comp/Victim	[REDACTED]
3. An individual	Comp/Victim	Unknown

Subject Officer(s)	Shield	TaxID	Command
1. POM Samuel Hui	28856	953978	075 PCT
2. POM W [REDACTED] S [REDACTED]	[REDACTED]	[REDACTED]	075 PCT
3. POM A [REDACTED] C [REDACTED]	[REDACTED]	[REDACTED]	075 PCT
4. POM A [REDACTED] W [REDACTED]	[REDACTED]	[REDACTED]	075 PCT
5. SSA R [REDACTED] M [REDACTED]	[REDACTED]	[REDACTED]	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM M [REDACTED] B [REDACTED]	[REDACTED]	[REDACTED]	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Samuel Hui	Abuse of Authority: Police Officer Samuel Hui stopped D [REDACTED] S [REDACTED]	A . Exonerated
B . POM A [REDACTED] W [REDACTED]	Abuse of Authority: Police Officer A [REDACTED] W [REDACTED] stopped K [REDACTED] C [REDACTED]	B . Exonerated
C . POM A [REDACTED] C [REDACTED]	Abuse of Authority: Police Officer A [REDACTED] C [REDACTED] stopped an individual.	C . Exonerated
D . POM Samuel Hui	Abuse of Authority: Police Officer Samuel Hui questioned D [REDACTED] S [REDACTED]	D . Substantiated
E . POM A [REDACTED] W [REDACTED]	Abuse of Authority: Police Officer A [REDACTED] W [REDACTED] questioned K [REDACTED] C [REDACTED]	E . Exonerated
F . POM A [REDACTED] C [REDACTED]	Abuse of Authority: Police Officer A [REDACTED] C [REDACTED] questioned an individual.	F . Unsubstantiated
G . POM Samuel Hui	Abuse of Authority: Sergeant Samuel Hui questioned D [REDACTED] S [REDACTED]	G . Exonerated
H . POM A [REDACTED] C [REDACTED]	Abuse of Authority: Police Officer A [REDACTED] C [REDACTED] frisked an individual.	H . Unsubstantiated
I . POM Samuel Hui	Abuse of Authority: Police Officer Samuel Hui frisked D [REDACTED] S [REDACTED]	I . Unsubstantiated
J . POM A [REDACTED] W [REDACTED]	Abuse of Authority: Police Officer A [REDACTED] W [REDACTED] frisked K [REDACTED] C [REDACTED]	J . Unsubstantiated
K . POM A [REDACTED] W [REDACTED]	Abuse of Authority: Police Officer A [REDACTED] W [REDACTED] searched K [REDACTED] C [REDACTED]	K . Unsubstantiated

Officer(s)	Allegation	Investigator Recommendation
L . POM A [REDACTED] W [REDACTED]	Abuse of Authority: Police Officer A [REDACTED] W [REDACTED] searched the vehicle in which D [REDACTED] S [REDACTED] K [REDACTED] C [REDACTED] and an individual were occupants.	L . Unsubstantiated
M . POM Samuel Hui	Abuse of Authority: Police Officer Samuel Hui searched the vehicle in which individuals were occupants.	M . Unsubstantiated
N . SSA R [REDACTED] M [REDACTED]	Abuse of Authority: Sergeant R [REDACTED] M [REDACTED] searched the vehicle in which individuals were occupants.	N . Unsubstantiated
O . SSA R [REDACTED] M [REDACTED]	Force: Sergeant R [REDACTED] M [REDACTED] used physical force against D [REDACTED] S [REDACTED]	O . Exonerated
P . POM W [REDACTED] S [REDACTED]	Abuse of Authority: Police Officer W [REDACTED] S [REDACTED] interfered with D [REDACTED] S [REDACTED] use of a recording device.	P . Exonerated

Case Summary

On June 4, 2019, D■■■■ S■■ submitted the following complaint via the CCRB website.

At approximately 3:41 a.m. on June 2, 2019, Mr. S■■ his friend K■■ C■■ and a third, unidentified man were sitting in a parked vehicle at the intersection of Fulton Street and Miller Avenue in Brooklyn when Police Officer Samuel Hui (since promoted to sergeant), Police Officer A■■ W■■ and Police Officer A■■ C■■ of the 75th Precinct drove by them. The officers observed that the civilians' vehicle was partially parked in the pedestrian walkway, approached it on foot, and stopped the civilians (**Allegation A: Abuse of Authority: Stop: Exonerated, Allegation B: Abuse of Authority: Stop: Exonerated, Allegation C: Abuse of Authority: Stop: Exonerated**). The officers asked the civilians about their activities and possible possession of contraband (**Allegation D: Abuse of Authority: Question: Substantiated, Allegation E: Abuse of Authority: Question: Exonerated, Allegation F: Abuse of Authority: Question: Unsubstantiated, Allegation G: Abuse of Authority: Question: Exonerated**).

Police Officer Hui called for backup, bringing Sergeant R■■ M■■ Police Officer W■■ S■■ and Police Officer M■■ B■■ of the 75th Precinct to the scene. The officers then removed the civilians from their vehicle and frisked them (**Allegation H: Abuse of Authority: Frisk: Unsubstantiated, Allegation I: Abuse of Authority: Frisk: Unsubstantiated, Allegation J: Abuse of Authority: Frisk: Unsubstantiated**). Police Officer W■■ also searched Mr. C■■ (**Allegation K: Abuse of Authority: Search (of person): Unsubstantiated**).

Police Officer W■■ Police Officer Hui, and Sergeant M■■ all searched portions of the civilians' vehicle (**Allegation L: Abuse of Authority: Vehicle search: Unsubstantiated, Allegation M: Abuse of Authority: Vehicle search: Unsubstantiated, Allegation N: Abuse of Authority: Vehicle search: Unsubstantiated**). Mr. S■■ argued with the officers and attempted to walk around the vehicle, prompting Sergeant M■■ to push him back to his original position (**Allegation O: Force: Physical force: Exonerated**). Mr. S■■ also used the flashlight on his cellphone while recording the incident, and Police Officer S■■ repeatedly ordered him not to do so (**Allegation P: Abuse of Authority: Interference with recording: Exonerated**).

The officers admonished the civilians for allegedly possessing marijuana, having open containers of alcohol in the vehicle, and parking illegally. The officers then left the area without issuing any summonses or arresting anyone.

Mr. S■■ recorded portions of this incident with his cellphone (**Board Review 01 and 02**). The investigation obtained BWC video from Police Officer C■■ (**Board Review 03**), Police Officer W■■ (**Board Review 04**), Police Officer Hui (**Board Review 05**), Sergeant M■■ (**Board Review 06**), Police Officer S■■ (**Board Review 07**), and Police Officer B■■ (**Board Review 08**).

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Samuel Hui stopped D■■ S■■
Allegation B – Abuse of Authority: Police Officer A■■ W■■ stopped K■■

C
Allegation C – Abuse of Authority: Police Officer A O stopped an individual.

Mr. S provided a telephone statement on June 6, 2019 (**Board Review 09**) and a sworn statement at the CCRB on June 17, 2019 (**Board Review 10**). Police Officer Hui was interviewed on March 3, 2020 (**Board Review 11**). Police Officer O was interviewed on February 28, 2020 (**Board Review 12**). Police Officer W was interviewed on March 4, 2020 (**Board Review 13**).

It is undisputed that as this incident began, the three civilians were sitting inside their parked vehicle on the northeast corner of Fulton Street and Miller Avenue. Mr. S was in the driver's seat, Mr. C was in the front passenger seat, and the unidentified civilian sat in the rear seat behind Mr. S. Police Officer Hui approached Mr. S. Police Officer W approached Mr. C and Police Officer O approached the unidentified rear passenger.

All three interviewed officers stated that they first noticed the civilians' vehicle because it was parked partially in the pedestrian crosswalk across Miller Avenue. Screenshots from Police Officer O and Police Officer B BWC videos corroborate these accounts, with the civilian vehicle's front tires positioned within the painted crosswalk (**Board Review 14**). The officers consistently said that they first approached the civilians' vehicle solely because it was illegally parked.

Under New York Vehicle and Traffic Law Article 32, Section 1202.(a).1.d, no person shall stop, stand, or park a vehicle on a crosswalk (**Board Review 15**). Officers may stop civilians when they possess a reasonable suspicion that the civilians are engaged in criminality (*People v. De Bour*, 40 N.Y.2d 210, 1976) (**Board Review 16**).

As the preponderance of evidence indicates that the civilians were visibly illegally parked as this incident began, the officers were justified in initially approaching and stopping them. It is therefore recommended that **Allegations A, B, and C be exonerated.**

Allegation D – Abuse of Authority: Police Officer Samuel Hui questioned D S

Allegation E – Abuse of Authority: Police Officer A W questioned K C

Allegation F – Abuse of Authority: Police Officer A O questioned an individual.

Allegation G – Abuse of Authority: Police Officer Samuel Hui questioned D S

As recorded in Police Officer O BWC video, Police Officer Hui immediately asked Mr. S "No weapons on you, right?" when he reached the civilian vehicle (0:35 of **Board Review 03**). In his interview, Police officer Hui stated that Mr. S did not do anything that indicated he had a weapon. Police Officer Hui stated that he asked Mr. S if he had any razors, and explained to the investigation that this was routine procedure.

As recorded in his BWC video, Police Officer W asked Mr. C if he knew that he could not have open containers of alcohol in the vehicle, and indicated the green, open, Dos Equis-brand beer bottle in the center console (1:00 of **Board Review 04**). A few

minutes later, Police Officer W■■■ asked Mr. C■■■ if the beer in the center console belonged to Mr. S■■■ and Mr. C■■■ refused to answer the question or claim ownership of the beer (4:05 of **Board Review 04**).

As recorded in his BWC video, Police Officer O■■■ asked the unidentified civilian “You guys smoking in the car?” (1:33 of **Board Review 03**) Shortly thereafter, Police Officer Hui told Mr. S■■■ that he smelled marijuana coming from the vehicle, and Mr. S■■■ responded that this was not true (as recorded in Police Officer W■■■ BWC video, 2:35 of **Board Review 04**). In their interviews, Police Officer Hui, Police Officer O■■■ and Police Officer W■■■ all described smelling marijuana in the vehicle upon their initial approach, but did not observe other evidence of marijuana possession at this point. In videos from this incident and both his telephone and sworn statements, Mr. S■■■ denied that there was any marijuana in the vehicle.

As recorded in his BWC video, Police Officer O■■■ had the unidentified civilian exit the vehicle and asked if he had weapons on him (2:00 of **Board Review 03**). In his interview, Police Officer O■■■ stated that while the unidentified civilian was inside the vehicle, he saw a single bulge on the civilian’s body. He did not remember what it looked like, where on the civilian’s body it was, or any other details.

As recorded in his BWC video, Police Officer Hui asked Mr. S■■■ “How much you been drinking tonight, sir?” Mr. S■■■ did not respond. Police Officer Hui asked Mr. S■■■ if he was aware that he could not drink alcohol in the vehicle, and Mr. S■■■ denied doing so (1:50 of **Board Review 05**). Police Officer Hui pointed out the open container in the cupholder next to Mr. S■■■ and Mr. S■■■ said that this belonged to Mr. C■■■ Police Officer Hui said that Mr. S■■■ was possessing the container, Mr. S■■■ repeated that the container was Mr. C■■■ and Police Officer Hui said that this was not possible because Mr. C■■■ had another container between his feet. They argued about whether this second container was open, and Police Officer Hui again asked “How much you been drinking tonight? You OK to drive?” Mr. S■■■ did not answer (0:40 to 3:00 of **Board Review 05**).

A police officer may pointedly question a civilian when he possesses a founded suspicion that the civilian is engaged in criminality (**Board Review 16**). Under New York Vehicle and Traffic Law Article 33, Section 1227.1, the possession of an open container containing an alcoholic beverage, in a motor vehicle located upon the public highways or right-of-way public highway is prohibited. Any operator or passenger violating this section shall be guilty of a traffic infraction (**Board Review 17**).

By his own account, Police Officer Hui had no reason to believe that Mr. S■■■ was armed, and immediately asked him about having a weapon based solely on routine. As Police Officer Hui had no justification for asking Mr. S■■■ this pointed question, it is therefore recommended that **Allegation D** be **substantiated**.

As evidenced by the officers’ BWC videos, the civilians had at least one open beer bottle in plain view in their center console. As this clearly violated the Vehicle and Traffic Law, both Police Officer W■■■ and Police Officer Hui were justified in questioning Mr. C■■■ and Mr. S■■■ about their alcohol possession and consumption. It is therefore recommended that **Allegations E** and **G** be **exonerated**.

It is disputed whether the civilians’ vehicle smelled of marijuana during this incident, and there is no evidence with which to credit either the civilians’ or officers’ accounts. Additionally, Police Officer O■■■ description of the rear passenger’s bulge lacked any detail or specificity and is not corroborated by video or other evidence. As the investigation cannot determine, by a preponderance of the evidence, whether Police Officer

C [REDACTED] was justified in questioning the unidentified civilian about marijuana or a weapon, it is therefore recommended that **Allegation F** be **unsubstantiated**.

Allegation H – Abuse of Authority: Police Officer A [REDACTED] C [REDACTED] frisked an individual.

Allegation I – Abuse of Authority: Police Officer Samuel Hui frisked D [REDACTED] S [REDACTED]

Allegation J – Abuse of Authority: Police Officer A [REDACTED] W [REDACTED] frisked K [REDACTED].

C [REDACTED]

Allegation K – Abuse of Authority: Police Officer A [REDACTED] W [REDACTED] searched K [REDACTED].

C [REDACTED]

Allegation L – Abuse of Authority: Police Officer A [REDACTED] W [REDACTED] searched the vehicle in which D [REDACTED] S [REDACTED] K [REDACTED] C [REDACTED] and an individual were occupants.

Allegation M – Abuse of Authority: Police Officer Samuel Hui searched the vehicle in which D [REDACTED] S [REDACTED] K [REDACTED] C [REDACTED] and an individual were occupants.

Allegation N – Abuse of Authority: Sergeant R [REDACTED] M [REDACTED] searched the vehicle in which D [REDACTED] S [REDACTED] K [REDACTED] C [REDACTED] and an individual were occupants.

As recorded in his BWC video, after having him exit the vehicle, Police Officer C [REDACTED] frisked the unidentified civilian for approximately ten seconds (2:00 of **Board Review 03**). While the dark lighting and close proximity of the camera to the civilian's body make it unclear exactly where Police Officer C [REDACTED] frisked, the video's movement indicates that he frisked portions of the civilian's upper body, waist, and upper legs. In his interview, Police Officer C [REDACTED] stated that he frisked the civilian's body where a visible bulge was (see **Allegation F**) but was unable to identify where that was and did not remember if he frisked anywhere else. Police Officer C [REDACTED] did not remember what the bulge was, but recalled having a conversation about the bulge with the rear passenger, determining it was an innocuous item, and allowing the rear passenger to keep it.

As recorded in his BWC video, after having him exit the vehicle, Police Officer Hui frisked Mr. S [REDACTED] (4:10 of **Board Review 05**). While the dark lighting and close proximity of the camera to the civilian's body make it unclear exactly where Police Officer Hui frisked, in his interview he stated that he frisked Mr. S [REDACTED] from neck to ankles. Prior to this frisk, Mr. S [REDACTED] did not do anything that indicated he had a weapon.

As recorded in Police Officer W [REDACTED] BWC video, Mr. C [REDACTED] retrieved his vehicle registration from the glove compartment, then continued to search through the glove compartment. Police Officer W [REDACTED] told Mr. C [REDACTED] to show him his hands, then briefly reached into the glove compartment (1:50 to 2:05 of **Board Review 04**). Approximately five minutes later, Police Officer W [REDACTED] had Mr. C [REDACTED] exit the vehicle and frisked his shoulders, torso, and legs (7:30 of **Board Review 04**). Police Officer W [REDACTED] asked Mr. C [REDACTED] what a certain object was, and Mr. C [REDACTED] replied that it was his wallet. Police Officer W [REDACTED] gripped and felt the object (8:23 of **Board Review 04**), then took a white object out of Mr. C [REDACTED] upper pants pocket and asked what it was. Mr. C [REDACTED] said it was a pack of cigarettes, and Police Officer W [REDACTED] put the object pack in his pocket. In his interview, Police Officer W [REDACTED] stated that whenever officers take someone out of a vehicle, they frisk them. In this incident, Mr. C [REDACTED] jacket appeared as though it could have contained a knife. Police Officer W [REDACTED] did not remember where on Mr. C [REDACTED] body this knife would have been, if there actually was a knife, or if he went into Mr. C [REDACTED] pockets.

As recorded in their BWC videos, both Police Officer Hui (6:05 to 9:30 of **Board Review 05**) and Sergeant M [REDACTED] (3:45 to 5:45 of **Board Review 06**) searched the vehicle's passenger cabin.

As noted under **Allegation F**, all three interviewed officers described smelling marijuana coming from the vehicle while Mr. S [REDACTED] consistently denied that the car smelled of marijuana.

The smell of marijuana, on its own, gives officers the authority to search a vehicle and its occupants (People v. Chestnut, 43 A.D.2d 260, 1974) (**Board Review 18**).

In their interviews, the officers either described no evidence that the civilians possessed weapons or very vague evidence that may not have justified full-body frisks or a vehicle search. However, if the officers smelled marijuana within the vehicle, they would have been justified in frisking and searching the civilians and searching the vehicle's interior. It is disputed whether this smell was present during the incident, and the investigation has no evidence with which to credit either account. As the investigation cannot determine, by a preponderance of evidence, whether the officers were justified in frisking and searching the civilians or searching their vehicle, it is therefore recommended that **Allegations H through N** be **unsubstantiated**.

Allegation O – Force: Sergeant R [REDACTED] M [REDACTED] used force against D [REDACTED] S [REDACTED]

As most clearly shown by Police Officer S [REDACTED] BWC video, Sergeant M [REDACTED] stood at the civilian vehicle's rear and monitored the three civilians. He argued with Mr. S [REDACTED] about whether the vehicle was parked in the crosswalk, and Mr. S [REDACTED] stepped away from the vehicle's bumper towards him. Sergeant M [REDACTED] then pushed Mr. S [REDACTED] upper body, moving him backwards approximately one step to his original position near the vehicle. Sergeant M [REDACTED] told Mr. S [REDACTED] not to move but used no further force (2:45 to 3:05 of **Board Review 07**). This portion of the incident can also be seen in Police Officer C [REDACTED] and Sergeant M [REDACTED] BWC videos (9:35 to 9:50 of **Board Review 03**, 2:50 to 3:10 of **Board Review 06**).

Under NYPD Patrol Guide Procedure 221-01, any application or use of force must be reasonable under the circumstances. Officers must use only the reasonable force necessary to gain control or custody of a subject (**Board Review 19**).

As seen in multiple BWC videos, Mr. S [REDACTED] tried to move away from his vehicle and towards the officers. Since Mr. S [REDACTED] was not free to leave or move around the incident, and the officers needed to control three civilians within a busy intersection, it was reasonable for Sergeant M [REDACTED] to use a low level of force to restrict Mr. S [REDACTED] movement. As the preponderance of evidence shows that Sergeant M [REDACTED] acted within the Patrol Guide's rules for use of force, it is therefore recommended that **Allegation O** be **exonerated**.

Allegation P – Abuse of Authority: Police Officer W [REDACTED] S [REDACTED] interfered with D [REDACTED] S [REDACTED] use of a recording device.

As recorded on his own BWC video, Police Officer S [REDACTED] repeatedly gave Mr. S [REDACTED] orders about recording the officers with his cellphone's flashlight activated (**Board Review 07**). At 5:15 in the video, Mr. S [REDACTED] first turned on his cellphone flashlight. Prior to this, Mr. S [REDACTED] had been recording the incident without the flashlight on (see Mr. S [REDACTED] own video, **Board Review 01**). At 5:30 in Police Officer S [REDACTED] BWC video,

Mr. S█ pointed his phone towards the camera. His flashlight was noticeably brighter than its surroundings, causing the video to blur from the glare. A few seconds later, Police Officer S█ told Mr. S█ to turn the light off. Mr. S█ tilted the light away from the BWC and continued to record. A few minutes later (7:55 of **Board Review 07**), Mr. S█ was back in the driver's seat while Police Officer Hui and Police Officer S█ spoke at the vehicle's rear. Mr. S█ again pointed his phone's flash towards the officers, forming a bright patch in the bottom left corner of the BWC video frame. Police Officer S█ asked Mr. S█ "How many times did I tell you about the light?" and walked over to the driver's open window. At this point, the phone and flashlight fell out of view, but neither Mr. S█ video nor the BWC video shows whether Police Officer S█ touched the phone or Mr. S█ lowered it himself. Mr. S█ and Police Officer S█ argued for approximately one minute about whether the flashlight had been shining in any officer's face, and Police Officer S█ told Mr. S█ not to reach for or use his phone any more. Police Officer S█ then walked away.

Under NYPD Patrol Guide Procedure 203-29, civilians have a right to lawfully observe and/or record police activities, including detentions, searches, and arrests, that happen on public streets and sidewalks. This right to observe and/or record police action can be limited for reasons such as the safety of officers or other members of the public, or when a violation of law is committed by the individual(s) who are videotaping. Otherwise, officers may not threaten, intimidate, or otherwise discourage an observer from recording an officer's activities (**Board Review 20**).

While it is undisputed that Mr. S█ recorded the police on a public street as they detained and searched the civilians, Mr. S█ disputed that his recording ever interfered with the officers' actions or threatened their safety. However, the BWC video makes it clear that he repeatedly shone his phone's flashlight at Police Officer S█ position, and the light was bright enough relative to its surroundings to blur or blind a camera. Furthermore, Police Officer S█ (and the other officers) allowed Mr. S█ to record the incident for several minutes before he turned on the flash, and for several minutes after that while he pointed the flash toward the ground. Similarly, Police Officer S█ orders were all directed specifically toward Mr. S█ use of the flash, not the act of recording itself. As the preponderance of evidence indicates that Police Officer S█ only restricted Mr. S█ right to record the police to prevent the flash from blinding him, it is therefore recommended that **Allegation P** be **exonerated**.

Civilian and Officer CCRB Histories

- █
- █
 - █
- Police Officer Hui has been a member of service for seven years and has been a subject of 10 other CCRB complaints and 40 other allegations, three of which were substantiated. Police Officer Hui's CCRB history does not reflect any apparent pattern pertinent to this investigation.

- CCRB complaint number 201610413 involved substantiated allegations of abuse of authority (frisk, vehicle search) and discourtesy (action) against Police Officer Hui. The CCRB recommended Command Discipline A and the NYPD enforced Formalized Training.

- [REDACTED]
- [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]

- [Redacted]

Mediation, Civil and Criminal Histories

- Mr. S [Redacted] declined to mediate this complaint.
- According to the New York City Office of the Comptroller, as of April 16, 2020, no Notice of Claim has been filed regarding this incident (**Board Review 23**).
- [Redacted]
- [Redacted]

Squad No.: 7

Investigator:	<u>Matthew Chaves</u> Signature	<u>SI Matthew Chaves</u> Print Title & Name	<u>05/13/2020</u> Date
Squad Leader:	_____ Signature	Manager Vanessa Rosen _____ Print Title & Name	May 27, 2020 _____ Date
Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date